

## **PURCHASE OPTION AGREEMENT**

[City to HPSD]

This Purchase Option Agreement (the "Option") is made as of the latest date below executed (the "Effective Date") by and between City of Durham, a North Carolina municipal corporation ("City") and The Historic Preservation Society of Durham, Inc., a North Carolina nonprofit corporation ("HPSD").

### **Recitals:**

City is the owner of the parcel of real property, together with all appurtenances thereto and improvements thereon, lying in Durham County, North Carolina known as 102 Morris Street, Durham, North Carolina and having Durham County Parcel ID 103053 (the "Property"). The Property contains two buildings within the same tax parcel, a two story building on the northeast corner of the intersection of Morris Street and East Chapel Hill Street, and a one story building to the immediate east of the two story building and on the north side of East Chapel Hill Street.

City and HPSD agree that the Property has historic value because of its age, architecture and location in downtown Durham. City desires to dispose of the Property and issued a request for proposals (the "RFP") for redevelopment of the Property. Re:Vamp Durham, LLC ("Re:Vamp") responded to the RFP and City accepted Re:Vamp's proposal, in part because Re:Vamp seeks to preserve certain important historic aspects of the Property.

In order to assure the historic preservation of the Property in accordance with certain standards, City is willing to sell an option to HPSD, and HPSD is willing to purchase an option from City with the intention of entering a purchase option agreement with Re:Vamp (the "Re:Vamp Option"). By entering into this Option, City and HPSD intend that if Re:Vamp exercises its option with HPSD, HPSD will exercise this Option with City, and the closings will be simultaneous.

City and HPSD intend that City's disposition of the Property be in accordance with N.C.G.S. § 160A-266 which permits disposition of real property pursuant to private negotiation with and sale to a nonprofit corporation where certain conditions are met.

### **Agreement:**

Now, therefore, for and in consideration of the covenants set forth herein, the parties agree as follows:

1. **Option.** For and in consideration of the sum of \$250.00 (the "Option Money", such term to mean and include any additional monies delivered to City to extend the term of the Option), the receipt and sufficiency of which is hereby acknowledged, City hereby grants unto HPSD, its successors and permitted assigns, the exclusive right and option to purchase the Property on the terms and conditions hereinafter stated.

2. Duration of Option; Extensions. The initial option period shall commence on the Effective Date and shall continue through and until September 30, 2011. If HPSD requires an extension, but only for excusable delay such as matters outside its control and that of Re:Vamp, HPSD may elect, with the consent of the City, not to be unreasonably withheld, to extend the term of this Option for one or more, but no more than four, additional, consecutive three calendar month periods by delivering to City with respect to each extension period prior to the expiration of the initial option period as may have been extended (a) written notice and (b) an additional \$100.00 of Option Money. The Option Money shall not be credited against the purchase price in favor of HPSD and shall be considered earned by City except in the event of City's breach of this Option.

3. Purchase Price. If the Option is exercised by HPSD, the purchase price for the Property shall be \$224,850.00 and shall be payable in cash at Closing to City.

4. Due Diligence. City shall make reasonable efforts to deliver to HPSD or otherwise make available to HPSD documents in its possession or otherwise reasonably available relating to the Property including but not limited to plats, plans, environmental reports, surveys and other reports, title policies and documents, and appraisals.

5. Retention of Option Money. In the event that this Option is not exercised during the option period or any extension thereof, the Option Money shall, except as hereinafter provided, be retained by City, and HPSD's rights hereunder shall cease and terminate. In the event that HPSD exercises the Option but does not close for any reason, the Option Money shall be retained by City as liquidated damages and City shall have no other remedies at law or equity.

6. Exercise of Purchase Option; Closing. This Option may be exercised by HPSD by giving written notice to City at any time within the option period or any extension thereof. Notice of exercise of the Option shall create a binding contract for purchase and sale of the Property as set forth herein, and closing (the "Closing") shall be on a date (the "Closing Date") mutually agreed upon by the parties hereto, but no earlier than 60 days from the date of notice, and which date shall in no event be later than three calendar months after the expiration of the initial option period or any extension thereof, as applicable.

7. Risk of Loss. All risk of loss as a result of any exercise of the power of eminent domain or by reason of fire or other casualty shall remain on City until the transfer of legal title by recording of the deed.

8. Closing and Deed; Protective Covenants; Costs. In the event the Option herein granted is exercised, Closing of the purchase and sale shall be at the office of HPSD's counsel or such other mutually agreeable location. At the closing, HPSD shall pay to City the purchase price as set forth in above paragraph 3 by certified check or cashier's check payable to the City of Durham, and simultaneously City shall deliver to HPSD, or its representative, a North Carolina non-warranty deed conveying the Property "AS-IS", where is, with all faults, no implied warranties, no guarantees, and no seller representations; HPSD will be responsible for the payment of ad valorem taxes for the current tax year if closing occurs after January 1 but before July 1 (taxes will not be prorated), and HPSD is responsible for listing the property with

the Tax Assessors' Office after closing; provided, however, (i) without the prior written consent of HPSD, City shall not during the term of this Option impose any liens, covenants, conditions or restrictions of record or otherwise which would encumber or in any manner limit or restrict the title or use of the Property or initiate a rezoning of the Property, and (ii) there shall be no leases of any type, written or oral, encumbering the Property. Exclusive possession of the Property shall be delivered at Closing.

The deed shall have attached to it a preservation agreement as specified in N.C.G.S. § 160A-266 and as defined in N.C.G.S. § 121-35, in the form of protective covenants for the purpose of protecting the historic characteristics that make the Property significant (the "Protective Covenants").

Each party shall pay its own attorney fees. HPSD shall pay for all recording fees, title examination charges, title insurance, and other due diligence costs it incurs. All other charges, prorations and adjustments not specifically provided for herein shall be allocated in accordance with local custom and usage.

9. Conditions to City's Obligation to Close. It shall be a condition precedent to City's obligation to close that HPSD shall have demonstrated to City's reasonable satisfaction that Re:Vamp has:

- (a) entered into a rehabilitation agreement for the Property with HPSD;
- (b) agreed on the form and substance of the Protective Covenants to be attached to the deed from City to HPSD;
- (c) provided to City and HPSD for Re:Vamp's proposed rehabilitation of the shell and for the upfit of the Property: (x) schematic drawings by May 31, 2011, and (y) design development drawings by July 31, 2011; provided, however, Re:Vamp's failure to deliver one or both of items (x) and (y) shall not be a failure of the condition precedent if Re:Vamp worked or is working in good faith toward producing items (x) and (y);
- (d) *intentionally deleted;*
- (e) obtained a building permit and all other necessary approvals for beginning construction, including a Certificate of Appropriateness from the Durham Historic Preservation Commission; and
- (f) exercised its option under the Re:Vamp Option, obtained acquisition and construction financing sufficient for carrying out the rehabilitation of the Property indicated by the construction drawings, executed such loan documentation and is in a position to close under its option with HPSD pending only HPSD's closing with City, and has provided proof of the equity necessary to close pursuant to its lender's requirements. A letter from Re:Vamp's counsel confirming that Re:Vamp has executed loan documents and that the requisite equity is in such counsel's trust account shall be sufficient proof of the existence of the signed loan documents and equity;

If any or all the conditions precedent (a) – (f) set forth above are not fulfilled or are not waived in writing by City prior to the Closing Date, then City may terminate this Option upon written notice to the other party, and the parties shall have no further liability hereunder.

10. Conditions to HPSD's Obligation to Close. Irrespective of whether HPSD exercised this Option, it shall be a condition precedent to HPSD's obligation to close that Re:Vamp closes simultaneously with HPSD under the Re:Vamp Option. If Re:Vamp does not close with HPSD under the Re:Vamp Option by the Closing Date, then HPSD shall be under no obligation to close with City, and City or HPSD may terminate this Option upon written notice to the other party, and the parties shall have no further liability hereunder.

11. Agents and Brokers. City and HPSD each represents to the other that neither has dealt with any real estate agent or broker in connection with this Option and that no fee or commission is due any party upon or as a result of Closing.

12. Notices. All notices required to be given under this Option shall be in writing and shall be delivered in person, by recognized overnight carrier, or certified mail. Notices shall be effective as of the time of delivery for hand delivered notices, one day after deposit with the overnight carrier, or three days after the postmark for certified mail. All notices postmarked within the option period or any extensions thereof shall be deemed to have been timely given. All notices shall be addressed or delivered to the following addresses:

to City:	City of Durham 101 City Hall Plaza Durham, NC 27701 Attn: Joel V. Reitzer, Director General Services Department
to HPSD: (overnight)	Historic Preservation Society of Durham, Inc. 3001 Academy Drive, # 130 Durham, NC 27707 Attn: Paul N Yale, Jr.
to HPSD: (mail)	Historic Preservation Society of Durham, Inc. PO Box 25411 Durham, NC 27702-5411 Attn: Paul N Yale, Jr.

The foregoing notice addresses may be changed only by providing written notice of such change to the other party according to the provisions of this paragraph no less than one week prior to such changed address taking effect.

13. Assignment. HPSD shall not assign this Option without the prior written consent of City. This Option shall bind and inure to the benefit of the parties hereto and their successors and assigns.

14. Personal Property. HPSD acknowledges that the Property is currently being leased to a number of tenants that occupy some or all of the spaces of the Property. Prior to Closing, City will terminate any existing lease and require any tenants to vacate the Property. HDPS, however, acknowledges that the Property is being sold “AS IS” pursuant to paragraph 8 above, and, as such, the City shall not be responsible for the removal of personal property from the Property.

15. Memorandum of Option. Either party upon request of the other will execute and deliver to the requesting party a memorandum of option. The requesting party shall be entitled to record the option at its cost.

16. Miscellaneous. Any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day. Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa. Where appropriate, any word denoting or referring to one gender shall be deemed to include the neuter or other gender as appropriate. This Option has been made and entered into under the laws of the State of North Carolina, and said laws shall govern the interpretation hereof. Paragraph headings or captions appearing in this Option are for convenience only, are not a part of this Option, and are not to be considered in interpreting this Option. This Option constitutes the entire and complete agreement between the parties hereto and supersedes any prior or oral written agreements between the parties with respect to the purchase and sale contemplated by this Option. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Option and no waiver of any of its terms or conditions shall be effective unless made in writing and duly executed by the parties hereto. All parties to this Option actively participated in negotiating the terms and conditions hereof and no provision shall be construed either in favor of or against any party by virtue of such party being the drafter of this Option.

17. Environmental Conditions. City has caused to be performed a “Phase I” environmental study and will cause to be performed a “Phase II” environmental study to include certain testing recommended as part of the Phase I study. The City shall share all studies, reports, and results of the Phase I and Phase II environmental studies (“Environmental Findings”) with HPSD. HPSD may terminate this Option should the Environmental Findings identify any regulated contamination, hazardous substance or material (“Environmental Contamination”) in quantities or concentration levels above permissible regulatory standards that would require removal or remediation.

18. Grant Applications. City agrees to allow ground-level owners/occupants of the Property to apply for the Merchandise-Based Retail Incentive Grant, administered by City’s Office of Economic and Workforce Development. Applicants must meet all of the requirements of the grant program. Notwithstanding what other incentives, concessions or accommodations City might provide HPSD or Re:Vamp, these ground-level merchants shall be fully eligible for a grant with no discounting of their eligibility scores by virtue of their participation in this project.

19. Subdivision. City and HPSD acknowledge that Re:Vamp intends to subdivide the Property into two parcels, each containing a building, and further that Re:Vamp or a successor may subject one or both new parcels to a declaration of condominium creating condominium units within one or both new parcels, and that the Protective Covenants will permit this subdivision.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Option to be executed effective as of the Effective Date.

CITY:

City of Durham

Attest:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_  
City Manager

HPSD:

The Historic Preservation Society of Durham, Inc.

By: \_\_\_\_\_  
Title of officer: \_\_\_\_\_

(Affix corporate seal.)

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

ACKNOWLEDGMENT BY  
CITY OF DURHAM

I, \_\_\_\_\_, a notary public, certify:  
(Type or print name of Notary Public)

(1) \_\_\_\_\_ personally appeared before me  
(Type or print name of City Clerk or Deputy City Clerk who attested)

in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its \_\_\_\_\_ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_  
Notary Public

State of \_\_\_\_\_

ACKNOWLEDGMENT BY  
THE HISTORIC PRESERVATION  
SOCIETY OF DURHAM, INC.

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is (strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of THE HISTORIC PRESERVATION SOCIETY OF DURHAM, INC., a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing agreement with the City of Durham and the corporate seal was affixed thereto. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public